

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

and

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 6617 of 2004

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Between:

1 State of Andhra Pradesh represented by its Principal Secretary to

Government I & CAD Department, Secretariat, Hyderabad

2 The Engineer-in-Chief (Admn.Wing) Errummanzil, Hyderabad

3 The Chief Engineer, N.S. Project, Hill Colony Nagarjunasagar, Nalgonda

District

4 The Superintending Engineer, N.s. Dam Circle Hill Colony, N.S. Dam

Nalgonda District.

5 The Executive Engineer, B.& R Division Hill Colony, N.S. Dam,

Nalgonda District

..... PETITIONERS

AND

M. Gopala Rao S/o. Venkata Krishnaiah

o/o the Executive Engineer, B&R Division Nagarjunasagar, Nalgonda

District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature writ of Certiorari and calling for the records relating to the order passed in Rev.M.A.No. 2798/2003 in O.A.No.1378/2002 dated:29-9-2003 on the file of the Honible AP Administrative Tribunal, Hyderabad and quash the same as illegal, arbitrary.

Counsel for the Petitioner: GP FOR SERVICES II

Counsel for the Respondent: MR.J.R.MANO HAR RAO

The Court made the following:

ORDER: (Per the Hon'ble Sri Justice J.Chelameswar)

Heard the learned Govt. Pleader appearing for the writ petitioner and Mr. J.R.Manohar Rao, learned counsel for the respondents.

2. The respondent is an Assistant Engineer in Irrigation Department and was placed under suspension pending enquiry in 1989. After the process of enquiry, he was dismissed from service in 1991. He challenged the said dismissal order before the A.P. Administrative Tribunal (for short 'the Tribunal'). The Tribunal allowed the O.A.No.41393 of 1991 by an order, dated 20.03.2001, on the ground that the disciplinary enquiry was flawed on account of violation of the principles of natural justice. The writ petitioner was however granted liberty to pursue with the departmental proceedings in accordance with law.

3. The petitioner again initiated the departmental proceedings against the respondent, the same are pending. By a separate order, dated 03.11.2001, in G.O.Rt.No.1209, the petitioner was deemed to have been placed under suspension with effect from the date of his dismissal from service by the earlier invalid order of the State Government. As the petitioner was continued to be paid only 50% of the subsistence allowance, he filed O.A. seeking enhancement of the subsistence allowance and also the benefits of revision of pay scales and incremental benefits payable to him since the date of his initial suspension in the year 1989.

4. The Tribunal by the order impugned herein has allowed the O.A.1378 of 2002 directing the writ petitioners to pay arrears of salary for the period from 03.02.1989 to 31.08.1991 by duly adjusting the subsistence allowance, which was paid to the applicant, and further directed that the applicant be paid subsistence allowance at 75% of the average pay, after assessing the amounts that the respondent would have earned during the 'suspension period'.

Thereafter, at the request of the applicant, the Tribunal passed another order dated 01.08.2003 directing the writ petitioners to pay 75% of the salary as subsistence allowance to the respondent herein, after expiry of three months from the date of deemed suspension i.e., 01.12.1991. The respondent has thereafter filed a Review seeking a further modification of the order of the Tribunal in the O.A. By the order dated 29.09.2003, the Tribunal directed the writ petitioners to pay subsistence allowance to the respondent by taking into account the annual grade increments and the revised pay scales of 1993, 1996 and 1999 and also to pay the arrears within a period of three months from the date of receipt of a copy of that order. Against the said order, this writ petition has been filed.

5. It is contended by the petitioners that in view of the provisions of F.R.24, as the respondent has not been in active service, there is no method by which his conduct in service be judged. Therefore, he is not entitled to any incremental benefits. In view of the provisions of F.R.24

“F.R.24. An increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by [the State Government], or by any authority to whom the State Government may delegate this power if his conduct has not been good, or his work has not been satisfactory. In ordering the withholding of an increment the withholding authority shall state the period of which it is withheld, and whether the postponement shall have the effect of postponing future increments.”

It is apparent from the rule that an increment shall be drawable by an employee as a matter of course unless it is withheld. An increment may however be withheld on proof of a Government servant's unsatisfactory or bad conduct. However, that an order withholding increments shall state the period from which it is withheld and whether the postponement shall have effect of postponing future increments. In any event, an order of withholding of increments constitutes a penalty and requires following the due procedure under the provisions of A.P.C.S. Rules, 1991.

6. It is not the case of the petitioners that any such procedure was followed or an order withholding the increments of the respondent was passed.

7. In the above circumstances, the assumption of the petitioners that the respondent is not entitled to the incremental benefits is misconception. We find no error in the order of the Tribunal warranting interference in this writ petition.

8. The writ petition is devoid of merits and is accordingly dismissed. No order as to costs.

J.CHELAMESWAR, J

GODA RAGHURAM, J

Dated 04th November, 2004.

Note:

Issue copy in a week.

(B/O)

ycr/mrk

To

1 The Principal Secretary to Government, State of Andhra Pradesh,

I & CAD Department, Secretariat, Hyderabad

2 The Engineer-in-Chief (Admn.Wing) Errummanzil, Hyderabad

3 The Chief Engineer, N.S. Project, Hill Colony Nagarjunasagar,

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Dam Nalgonda District.

5 The Executive Engineer, B.& R Division Hill Colony, N.S. Dam,

Nalgonda District

6. 2 CCs to G.P. for Services II, High Court Buildings, Hyderabad.

(OUT)

7. 2 C.D copies.